



66-2002-030
II-A-070

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 28 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. William ("Bill") Templin, President of
Ameristop Development Company
3955 Alexandria Pike
P.O. Box 268
Cold Spring, KY 41076-0268

Re: File No. AED/MSEB - 4859
NOTICE OF VIOLATION OF THE CLEAN AIR ACT AND
REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF THE
CLEAN AIR ACT

Dear Mr. Templin:

On June 12, 1998, an approved U.S. Environmental Protection Agency ("EPA") compliance survey was conducted at Ameristop Food Mart # 29105, a retail outlet, located at 986 Burlington Pike, Florence, Kentucky 41042. In addition, on July 24, 1998, an approved EPA compliance survey was also conducted at Ameristop Food Mart # 29004, a retail outlet, located at 472 Erlanger Road, Erlanger, Kentucky 41018. The surveys were conducted to determine compliance with section 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(k), and the regulations issued thereunder (40 C.F.R. part 80, subpart D). Where inappropriate fuels are used in internal combustion engines, the emissions of harmful gases can increase significantly. Notwithstanding improvements in vehicle emission controls, emissions from motor vehicles continue to make up a very large portion of all air pollution. Congress has established a program of improvement and regulation of fuels to protect our air quality from unnecessary pollution associated with the misfueling of vehicles.

The applicable regulations provide that no person may manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline



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represented as reformulated and intended for sale or use in any covered area unless such gasoline meets the applicable standards specified in 40 C.F.R. § 80.41. This law also subjects violators to a maximum civil penalty of \$25,000 per day for each violation in addition to recovery of the amount of the economic benefit or savings resulting from the violation.

As a result of the inspection, EPA has determined that Ameristop Food Marts # 29105 and # 29004, which are located in the VOC-Control Region 2 reformulated gasoline covered area, were selling premium gasoline in violation of 40 C.F.R. § 80.78(a)(1) in that the premium gasoline failed to meet the minimum VOC emissions performance reduction percentage standard specified in 40 C.F.R. § 80.41. The gasoline had a VOC emission performance reduction of 8.67 percent which violates the minimum VOC emissions performance reduction of 13.1 percent for VOC-control Region 2. As the distributor/retailer who owns, leases, operates, controls or supervises the retail outlets where the violations were found, Ameristop Development Company is liable for two (2) violations of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a)(1).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize the Administrator of EPA to assess a civil penalty of up to \$25,000 for every day of each violation and the economic benefit or savings resulting from the violation. In determining the appropriate penalty for the noticed violation, we consider the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of your business, your history of compliance with the Clean Air Act, actions taken by you to remedy the violation and to prevent recurrence of further violations, the effect of the penalty on your ability to continue in business and such other matters as justice may require.

We believe it is in your interest to demonstrate that remission or compromise of the penalty amount is appropriate. However, in order to assist us in developing the appropriate penalty and settlement positions, we have prepared the enclosed Request for Information. Under the law you are required to submit this information or be subject to additional penalties and other sanctions above and beyond those assessed for the fuel violation identified in this Notice. In addition, if you do not submit this information in a timely manner, we will be forced to make assumptions with regard to the factors to consider in

determining the appropriate amount of civil penalty which may not be in your interest or whether remission or compromise of the civil penalty amount is appropriate.

We encourage early settlement of such matters. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violation is corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court.

The EPA attorney designated below has been assigned to this case. All information should be sent to the case attorney. Please contact this attorney regarding the Notice of Violation and Request for Information.

Jocelyn L. Adair, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch (2242-A)
401 M Street, S.W.
Washington, D.C. 20460
Phone number: (202) 564-1011

Please let me once again emphasize that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement in this matter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Richard Bindi", followed by a large, stylized flourish or initial "L".

Bruce C. Buckheit, Director
Air Enforcement Division

Enclosure

Enclosure

REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF THE
CLEAN AIR ACT, 42 U.S.C. § 7414

Re: File No. AED/MSEB -4859

Section 114(a) of the Act, 42 U.S.C. § 7414(a), provides that " the Administrator may require any person.... who is subject to any requirement of this Act ...to make such reports ... and provide such other information, as the Administrator may reasonably require." Respondent is subject to the requirements and prohibitions of the reformulated gasoline ("RFG") and anti-dumping requirements of section 211(k) of the Act, 42 U.S.C. § 7545(k) and thereby is also subject to the informational requirements of section 114(a) of the Act.

Pursuant to the authority contained in section 114 of the Act, 42 U.S.C. § 7414, provide the following information for Ameristop Development Company ("Ameristop").

1. We are assuming that Ameristop and its affiliates and subsidiaries income before expenses or deductions is over \$250 Million. We are also assuming that Ameristop and its affiliates combined net worth is over seven (7) million and that Ameristop employs over 500 employees. If you do not agree, please submit any credible evidence that shows otherwise, including Ameristop's financial statements, balance sheets, profit and loss statements, and federal income tax returns for the prior three fiscal years and this year current to date.

2. Provide a comprehensive description of Ameristop and its affiliates and subsidiaries, including its business operations, number of employees, corporate structure, officers, and board of directors.

3. Provide the name and address, and identifying number of each retail outlet owned, leased, operated, controlled or supervised by Ameristop Development Company and its affiliates.

4. Provide documents demonstrating what actions were taken to remedy each violation detected at Ameristop # 29105 and Ameristop #29004, including the disposition of non-complying gasoline, and to ensure that similar types of violations are less apt to occur in the future.

5. Provide documents demonstrating that Ameristop had and utilized a quality assurance program for reformulated gasoline.

6. Describe the procedures that Ameristop used to ensure that the premium gasoline on sale at its retail outlets were in compliance by June 1, 1998.

7. Provide the name, title, and business address for each person responsible for implementing the oversight program described in Request # 5, and complying with the Ameristop procedures described in Request # 6.

8. Provide any and all other information indicating that remission or compromise of the civil penalty is appropriate. You may elect to provide a statement of the cause of the violation, if known, and any mitigating factors you desire to bring to our attention.

The response to this request shall be full, complete, and to the best of your knowledge. A reply which is false, misleading, or made without regard to its veracity is, in our judgment, equivalent to a refusal to submit information. In order for us to proceed expeditiously with our enforcement docket, your response must be submitted within fifteen days after the date of this letter. If you encounter difficulty in responding to this request within this time frame, please contact the case attorney identified herein. Absent a written extension of the required response date, your failure to respond by the date set forth may lead to immediate enforcement action and a lost opportunity for early settlement of this matter. EPA's enforcement options include the issuance of a compliance order by the Administrator under section 113(a) of the Act, or the filing of a civil action seeking a permanent or temporary injunction, or a civil penalty

of not more than \$25,000 per day of violation, or both, under section 113(b) of the Act. Please be aware that a knowing or willful submission of false, fictitious, or fraudulent statements or representations may subject you to possible criminal liability for filing false statements.

Pursuant to EPA regulations appearing at 40 C.F.R. Part 2, you are entitled to assert a confidentiality claim covering any part of the submitted information. If you do not assert such a claim, the submitted information may be available to the public without further notice. Information subject to a business confidentiality claim may be made available to the public only to the extent set forth in the above cited regulations.